

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 95-75

September 22, 1995

To: All Regional Directors, Officers-in-Charge,
and Resident Officers

From: B. Allan Benson, Acting Associate General Counsel

Subject: Five-Day Notification of Non-Receipt of Notices of Election

Memoranda OM 87-47, dated July 23, 1987, and OM 88-8, dated January 28, 1988, provide guidance to field offices on implementation of the Board's rule (29 CFR part 103) on the posting of Notices of Election. Specifically, they require that field offices apprise employers of their obligation to post Notices of Election 3 full days before the day of the election by referring to the rule in the cover letter which accompanies the petition and attaching a copy of the rule in its entirety to that letter. A subsequent clarification of the Supplementary Information Statement on the rule requires that a written reminder of the rule issue to the employer with the Decision and Direction of Election or the approved election agreement. Some offices provide an additional reminder by referring to the rule in the cover letter that accompanies the Notices of Election that are mailed to the employer.

Section 103.20(c) of the Board's Rules and Regulations requires employers to notify the Board at least 5 working days prior to the commencement of the election if it has not received copies of the election notice. Failure to do so estops employers from filing objections based on nonposting of the election notice. On May 9, 1995, the Board in Club Demonstration Services, 317 NLRB No. 52 (1995), forwarded to all field professionals as SD 95-10, dated May 12, 1995, clarified the 5-day requirement. Specifically, the Board interpreted Section 103.20(c) as "requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. The Regional Offices will refer to this clarification . . . when providing employers written notification of their Notice-posting obligations."

Accordingly, all Regional Offices should specifically refer to this clarification in their cover letters that accompany petitions and Decisions

and Directions of Elections or approved election agreements. The cover letter that accompanies the Notices of Election, should remain unchanged and continue to serve as a reminder of the 3-day posting requirement.

Each Regional Office, if it has not already done so, should conduct a staff meeting/training session to discuss this rule clarification and amended cover letters.

Any questions concerning this memorandum should be directed to your Assistant General Counsel.

B. A. B.

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